

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee
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DATE: February 1, 2007

SUBJECT: Juvenile Law: Notice Requirements for Juvenile Cases under the Indian Child Welfare Act (Welf. & Inst. Code, § 224.2) (amend Cal. Rules of Court, rule 5.664) (Action Required)

Issue Statement

Effective January 1, 2007, the Legislature passed Senate Bill 678 (Ducheny); Stats. 2006, ch. 838, which codified the federal Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (the act) by adding amendments to the Family Code, Probate Code, and Welfare and Institutions Code. The Family and Juvenile Law Advisory Committee proposes a minor substantive change unlikely to create controversy to conform the notice provisions of rule 5.664 of the California Rules of Court to new Welfare and Institutions Code section 224.2(a). The committee proposes that this change be adopted now to prevent confusion between the language of the new statute and the existing rule. While this change will only affect juvenile cases involving Indian children, the advisory committee plans to recommend a comprehensive unified rule implementing SB 678 in probate, family, and juvenile proceedings as part of a proposal developed jointly with the Probate and Mental Health Advisory Committee. The advisory committee will seek to have the joint proposal, including this change, circulated for public comment beginning in April 2007 and presented to the Judicial Council for adoption effective January 1, 2008.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective February 23, 2007, amend rule 5.664 of the California Rules of Court to conform the rule to Welfare and Institutions Code section 224.2(a).

The text of the proposed amended rule is attached at pages 4–5.

Rationale for Recommendation

The committee recommends deleting the existing text of rule 5.664(f), the notice section of the rule, and replacing it with references to the notice form and new Welfare and Institutions Code section 224.2(a), which sets forth detailed and comprehensive notice requirements and procedures to follow in juvenile cases involving Indian children. Section 224.2(a) tracks the language of the federal act and requires notice when “the court, a social worker, or probation officer knows or has reason to know that an Indian child *is* involved . . .” (italics added), whereas notice is triggered under the existing rule whenever an Indian child *is or may be* involved in a juvenile proceeding.

The amendment is necessary because SB 678 clearly states when notice under the act is triggered. The notice section of the rule is no longer necessary to provide guidance to the local courts; in fact, leaving it in the rule would prove confusing because local juvenile and appellate courts would need to reconcile the different language.

The committee intends to work with the Probate and Mental Health Advisory Committee to circulate for public comment beginning in April 2007 a proposal that would provide a unified rule for family, probate, and juvenile cases involving Indian children. The committee intends that the proposed unified rule would reference the new statutory provisions, where appropriate; retain applicable portions of the existing rule; and incorporate new sections to clarify procedural differences in the three case types.

Although this proposed change is substantive in nature, it is unnecessary to circulate the proposed amendments for comment because the Rules and Projects Committee has the authority to recommend that the Judicial Council adopt a rule without prior circulation “[i]f the proposal presents a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy.” (Cal. Rules of Court, rule 10.22(d)(2).) While ICWA provisions in general are quite controversial, this proposed rule change should not result in any controversy because this revision, while substantive, merely conforms the language of the rule to that of the new statute, providing clarifying language intended to assist those providing notice in juvenile cases under Welfare and Institutions Code section 224.2(a).

If adopted, the revised rule will be circulated for public comment in April with a comprehensive proposal for a unified rule for family, probate, and juvenile cases involving Indian children that responds to statutory changes to the Family Code, Probate Code, and Welfare and Institutions Code resulting from the passage of SB 678. That proposal may include additional changes to the notice provision intended for clarification consistent with this proposed change. When that proposal circulates for comment, the committee will invite comment both on this revision and on the complete revised rule.

Alternative Actions Considered

The committee considered waiting to include this change in the proposal referenced above that the committee will circulate for comment beginning in April 2007, with any

rules revisions going into effect January 2008. The committee, however, believes that the proposed change is necessary to comply with governing law and provide necessary guidance to local courts, thereby eliminating any possible confusion reconciling the rule and the new statute. The committee also considered circulating this revision for comment immediately, instead of waiting for the comprehensive proposal to be complete and ready for circulation. But the committee rejected that approach because the comment period would not allow time for changes before the full proposal had to go out for comment in the regular invitation to comment cycle, which would likely create great confusion. The committee believes that comprehensive and consistent comments on the entire proposal will lead to a better rule and ensure that interested parties have the opportunity to comment on all facets of the comprehensive proposal without unnecessary confusion.

Comments From Interested Parties

This proposal was not circulated for comment because it is noncontroversial, technical in nature, and proposes only minor substantive changes. It is therefore within the Judicial Council's purview to adopt the amendments without prior circulation.

Implementation Requirements and Costs

The proposed revisions will result in no additional costs.

The proposed rule is attached at pages 4–5. An excerpt of the referenced legislation is attached at pages 6–8.

Attachments

Rule 5.664 of the California Rules of Court would be amended, effective February 23, 2007, to read:

1 **Rule 5.664. Indian Child Welfare Act (25 U.S.C. § 1901 et seq.)**

2
3 (a)–(e) * * *

4
5 (f) **Notice; 25 U.S.C. § 1912**

6
7 ~~The parent or legal guardian and Indian custodian of an Indian child, and the~~
8 ~~Indian child’s tribe, must be notified of the pending petition and the right of~~
9 ~~the tribe to intervene in the proceedings, and proof of such notice, including~~
10 ~~copies of notices sent and all return receipts and responses received, must be~~
11 ~~filed with the juvenile court. If at any time after the filing of the petition the~~
12 ~~court knows or has reason to know that the child is or may be an Indian~~
13 ~~child, the following notice procedures must be followed: If there is reason to~~
14 ~~know that an Indian child is involved, the social worker or probation officer~~
15 ~~must send *Notice of Involuntary Child Custody Proceedings for an Indian*~~
16 ~~*Child (Juvenile Court)* (form JV-135) to the parent or legal guardian and~~
17 ~~Indian custodian of an Indian child, and the Indian child’s tribe, in~~
18 ~~accordance with Welfare and Institutions Code section 224.2.~~

19
20 ~~(1) *Notice of Involuntary Child Custody Proceedings for an Indian Child*~~
21 ~~*(Juvenile Court)* (form JV-135) must be sent, with a copy of the~~
22 ~~petition, by registered or certified mail with return receipt requested,~~
23 ~~and additional notice by first class mail is recommended;~~

24
25 ~~(2) Notice to the tribe must be to the tribal chairperson unless the tribe has~~
26 ~~designated another agent for service;~~

27
28 ~~(3) Notice must be sent to all tribes of which the child may be a member or~~
29 ~~may be eligible for membership;~~

30
31 ~~(4) If the identity or location of the parent or Indian custodian or the tribe~~
32 ~~cannot be determined, notice must be sent to the specified office of the~~
33 ~~Secretary of the Interior, which has 15 days to provide notice as~~
34 ~~required;~~

35
36 ~~(5) Notice must be sent whenever there is reason to believe the child may~~
37 ~~be an Indian child, and for every hearing thereafter unless and until it is~~
38 ~~determined that the act does not apply to the case;~~

39
40 ~~(6) If, after a reasonable time following the sending of notice under this~~
41 ~~rule—but in no event less than 60 days—no determinative response to~~

1 the notice is received, the court may determine that the act does not
2 apply to the case unless further evidence of the applicability of the act
3 is later received; and
4

5 (7) ~~If an Indian child's tribe has exercised its right of intervention in the~~
6 ~~proceedings after receiving form JV 135, subsequent notices may be~~
7 ~~sent in the form provided to all other parties. All other provisions of~~
8 ~~this section continue to apply.~~

9
10 **(g)-(p) * * ***

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SEC. 31. Section 224.2 is added to the Welfare and Institutions Code, to read:

224.2. (a) If the court, a social worker, or probation officer knows or has reason to know that an Indian child is involved, any notice sent in an Indian child custody proceeding under this code shall be sent to the minor's parents or legal guardian, Indian custodian, if any, and the minor's tribe and comply with all of the following requirements:

(1) Notice shall be sent by registered or certified mail with return receipt requested. Additional notice by first-class mail is recommended, but not required.

(2) Notice to the tribe shall be to the tribal chairperson, unless the tribe has designated another agent for service.

(3) Notice shall be sent to all tribes of which the child may be a member or eligible for membership, until the court makes a determination as to which tribe is the child's tribe in accordance with subdivision (d) of Section 224.1, after which notice need only be sent to the tribe determined to be the Indian child's tribe.

(4) Notice, to the extent required by federal law, shall be sent to the Secretary of the Interior's designated agent, the Sacramento Area Director, Bureau of Indian Affairs. If the identity or location of the parents, Indian custodians, or the minor's tribe is known, a copy of the notice shall also be sent directly to the Secretary of the Interior, unless the Secretary of the Interior has waived the notice in writing and the person responsible for giving notice under this section has filed proof of the waiver with the court.

(5) In addition to the information specified in other sections of this article, notice shall include all of the following information:

(A) The name, birthdate, and birthplace of the Indian child, if known.

(B) The name of the Indian tribe in which the child is a member or may be eligible for membership, if known.

(C) All names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known.

(D) A copy of the petition by which the proceeding was initiated.

(E) A copy of the child's birth certificate, if available.

(F) The location, mailing address, and telephone number of the court and all parties notified pursuant to this section.

(G) A statement of the following:

(i) The absolute right of the child's parents, Indian custodians, and tribe to intervene in the proceeding.

(ii) The right of the child's parents, Indian custodians, and tribe to petition the court to transfer the proceeding to the tribal court of the Indian child's tribe, absent objection by either parent and subject to declination by the tribal court.

(iii) The right of the child's parents, Indian custodians, and tribe to, upon request, be granted up to an additional 20 days from the receipt of the notice to prepare for the proceeding.

(iv) The potential legal consequences of the proceedings on the future custodial and parental rights of the child's parents or Indian

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custodians.

(v) That if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent the parents or Indian custodians pursuant to Section 1912 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(vi) That the information contained in the notice, petition, pleading, and other court documents is confidential, so any person or entity notified shall maintain the confidentiality of the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's rights under the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(b) Notice shall be sent whenever it is known or there is reason to know that an Indian child is involved, and for every hearing thereafter, including, but not limited to, the hearing at which a final adoption order is to be granted, unless it is determined that the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) does not apply to the case in accordance with Section 224.3. After a tribe acknowledges that the child is a member or eligible for membership in that tribe, or after a tribe intervenes in a proceeding, the information set out in subparagraphs (C), (D), (E), and (G) of paragraph (5) of subdivision (a) need not be included with the notice.

(c) Proof of the notice, including copies of notices sent and all return receipts and responses received, shall be filed with the court in advance of the hearing except as permitted under subdivision (d).

(d) No proceeding shall be held until at least 10 days after receipt of notice by the parent, Indian custodian, the tribe, or the Bureau of Indian Affairs, except for the detention hearing, provided that notice of the detention hearing shall be given as soon as possible after the filing of the petition initiating the proceeding and proof of the notice is filed with the court within 10 days after the filing of the petition. With the exception of the detention hearing, the parent, Indian custodian, or the tribe shall, upon request, be granted up to 20 additional days to prepare for that proceeding. Nothing herein shall be construed as limiting the rights of the parent, Indian custodian, or tribe to more than 10 days notice when a lengthier notice period is required by statute.

(e) With respect to giving notice to Indian tribes, a party shall be subject to court sanctions if that person knowingly and willfully falsifies or conceals a material fact concerning whether the child is an Indian child, or counsels a party to do so.

(f) The inclusion of contact information of any adult or child that would otherwise be required to be included in the notification pursuant to this section, shall not be required if that person is at risk of harm as a result of domestic violence, child abuse, sexual abuse, or stalking.

SEC. 32. Section 224.3 is added to the Welfare and Institutions Code, to read:

224.3. (a) The court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300, 601, or 602 is to be, or has been, filed is or may be an Indian child in all dependency proceedings and in any juvenile wardship proceedings if the child is at risk of entering foster care or is in foster care.

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(b) The circumstances that may provide reason to know the child is an Indian child include, but are not limited to, the following:

(1) A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family provides information suggesting the child is a member of a tribe or eligible for membership in a tribe or one or more of the child's biological parents, grandparents, or great-grandparents are or were a member of a tribe.

(2) The residence or domicile of the child, the child's parents, or Indian custodian is in a predominantly Indian community.

(3) The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service.

(c) If the court, social worker, or probation officer knows or has reason to know that an Indian child is involved, the social worker or probation officer is required to make further inquiry regarding the possible Indian status of the child, and to do so as soon as practicable, by interviewing the parents, Indian custodian, and extended family members to gather the information required in paragraph (5) of subdivision (a) of Section 224.2, contacting the Bureau of Indian Affairs and the State Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member or eligible for membership in and contacting the tribes and any other person that reasonably can be expected to have information regarding the child's membership status or eligibility.

(d) If the court, social worker, or probation officer knows or has reason to know that an Indian child is involved, the social worker or probation officer shall provide notice in accordance with paragraph (5) of subdivision (a) of Section 224.2.